IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2246 OF 1998

Shri.Suryakant Govindrao Shinde,
Shop No.6, Room No.15, in front of
Plot No.2, Sainath Estate,
Dahanukarwadi, M.G.Road, Kandivali (W),
Mumbai-67. .. Petitioner

V/s

1. State of Maharashtra, through
Secretary, Food and Civil Supplies
Department, Mantralaya, Mumbai.

2. The Hon'ble Minister, Food and Civil
Supplies Department, Mantralaya, Mumbai.

3. The Controller of Rationing,
Churchgate, Mumbai -20.

4. Shri.Vechu Shripatsingh Chavan,
Room No.15, in front of Plot No.15,
Hindustan Naka, Kandivali (W),
Mumbai -67.

5. Shri.Dukhhi Patiram Chavan,
Omprakas Stores, Hindustan Naka,
M.G.road, Islam Compound, Kandivali (W),
Mumbai - 67.

6. Shri.Ramraj Ramanihore Varma, Islam
Compound, Charkop, Hindustan Naka,
Kandivali (W), Mumbai - 67. .. Respondents

Mr.P.A.Pol for the Petitioner.

Mr.R.M.Patne, AGP for Respondent Nos.1 to 3.

Mr.S.P.Kanuga with Mr.M.V.Aiyer i/by Ms.Poonam Bhosale for Respondent No.5.

CORAM: F.I.REBELLO, &
S.P.KUKDAY, JJ.

DATE : 22.03.2005.

JUDGMENT: (Per F.I.Rebello, J.)

1. Petitioner was one of the applicants who had applied pursuant to an advertisement issued by Respondent Nos.1 to 3 for alloting the fair price shops. The 3rd Respondent, after considering all the applications, was pleased to allot fair price shops in favour of the petitioner herein and one Shri.Vechu Shripatsing Chavan. Their applications were found to comply with all the necessary requirements. The order notes that the allotment of authorization in favour of Vechu Shripatsing Chavan is subject to his surrendering his kerosene licence. Respondent Nos.5 and 6 aggrieved by the selection, preferred revision applications before the Hon'ble Minister, Food and Civil Supply Department. The Revisional Authority noted that the order of Respondent No.3 awarding shops to petitioner and Respondent No.4 was within jurisdiction. Then, however, proceeded to hold that the applications by Respondent Nos.5 and 6 were also in order and that the proposed area is an industrial area, and there is possibility of increase in the population and units and consequently decided to grant authorised ration shops to the applicant Nos.1 and 2, one each. The order in favour of the petitioner and Respondent No.4 was maintained. It transpires that the Respondent No.4 gave up ration shop and preferred to retain the kerosene licence.

2. As of 1.2.1999 the allotment was as under:-

Petitioner	-	4959 units
Respondent No.5	-	1573 units
Respondent No.6	-	1580 units

. The units have subsequently been revised in favour of the petitioner and Respondents respectively, which are as under:-

Petitioner	-	5551 units
Respondent No.5	-	3853 units
Respodnent No.6	-	6009 units

3. At the hearing of this petition, on behalf of the petitioner the learned Counsel contends that the action of Respondent No.1 in alloting two additional fair price shops to the area is without jurisdiction, inasmuch as there were no units which could have been alloted considering the minimum that had to be alloted in favour of the fair price shop. It is submitted that the action of Respondent No.2 in exercise of powers awarding more than two shops was without jurisdiction. No reply has been filed by Respondent No.5 and 6. However, an affidavit has been filed by Sambhaji Bhimaji Zaware,

Deputy Controller of Rationing. It is pointed out that the advertisement was issued on 19.3.1996 for 350 rationing shops. In the instant case, the matter was covered by Item No.554. Pursuant to the advertisement 11 applications were received and the Controller of Rationing decided to allot ration shops in favour of petitoner and Respondent No.4. The Regional Officer, it is pointed out, recommended the names of petitioner and Respondent No.4 and that the names of Respondent No.5 & 6 were not recommended. In so far as Vechu Shripatsingh Chavan it has been submitted that the Controller of Rationing, though had granted him a fair price shop, the unit position was not adequate and hence he was not in a position to run the shop. It was in these circumstances, Respondent No.2 allowed Respondent No.4 to run his original kerosene depot.

4. With the above, we may now consider the position in law and whether the Revisional Authority considering clause 30 of the Maharashtra Foodgrains Rationing Order of 1966 could exercise his revisional powers and grant additional fair price shops. As noted earlier, the advertisement was issued in the year 1996. There was a Government Resolution dated 12.11.1991 regulating the manner of the allotment of fair price shops. Under clause 5 the maximum number of units to be attached to fair price shop in different areas was set out. In the Mumbai and Thane rationing area, for the shops run by individuals, the maximim number of units were 8000. A

subsequent communication/letter was issued on 7th May, 1999 by Food and Civil Supplies and Consumer Protection Department in response to the letters dated 16.2.1999 and 11.3.1999. The contents of the said letter addressed to the Controller of Rationing, may be reproduced :-

> "As mentioned in your office letter dated 11th March, 1999, only one ration shop should be alloted under one Item Number and in case if additional units were exceeded in the area new advertisement to be published immediately."

. A Division Bench of this Court in Shri.Ramchandra Musia Pal V/s State of Maharashtra and 2 Others decided on 10th April, 2000 in Writ Petition No.1507 of 2000, directed the State of Maharashtra to frame a suitable policy or a scheme stipulating the minimum number of units that should be allocated to ration shops operating in the State bearing in mind other relevant and incidental issues that may be regarded as proper for the due implementation of the policy. Subsequent to the Judgment, Government Resolution was issued on 9.6.2000. By virtue of that, for Mumbai and Thane rationing area, for the shops to be run by individuals, minimum number of units was fixed at 3000 units and the maximum at 8000 units. Clause 5 of the said G.R. provides that if the maximum number of units exceeds by minimum number of units required by new shops, the notification may be

issued for sanction of new shop and after issue of notifiction the eligible applicant or institution should be allotted the excess number of units. By virtue of clause 6 it is further provided that when there is necessity for sanction of new shop by withdrawing excess units from the existing two or more shops, it should be ensured that the existing shops should get the maximum number of units prescribed, and at the time of doing this if the number of units happens to be excess by prescribed limits, one or more shop may be opened in Mumbai/ Thane rationing area. The order was made applicable to the notifications issued after the date of the order.

5. From a reading of the Circulars and Notifications, what emerges amongst other is :

(a) that in so far as shops run by individuals in Mumbai / Thane regional area, the minimum number of units should be 3000 and the maximum number of units should be 8000. No shop can be alloted if the minimum number of units are less than 3000.

(b) If there are excess units, as contemplated by G.R.of 9.6.2000 read with letter of 7.5.1999, in respect of the additonal units if a new shop is to be alloted a fresh advertisement should be published.

(c) before sanctioning a new ration shop, it must be

ensured that the existing shops will get the maximum number of prescribed units.

. It is thus clear that after 9.6.2000, the procedure for allotment of shops has been substantially changed.

6. With that we may now come to the other aspect of the matter namely, construction of clause 30. Is it open for the Revisional Authority to grant more shops than which were allotted by the Rationing Officer after the G.R.of 9.6.2000. Division Bench of this Court in Petition decided on 11.8.1998 in Writ Petition No.2971 of 1998, was dealing with one such contention viz. allotment of the additional shops. The allotment was also challenged on the ground that it was malafide. That was rejected. The Division Bench answered the point by observing as under:-

"We are, however, inclined to accept the submission that though suo moto revisional powers could have been used by the Respondent No.2, to look into the complaints against the petitioner society, the same could not have been exercised for the allotment of another shop to the Respodnent No.4. It is noticed that the advertisement dated 1st September, 1997 concerned only one shop. The applications had also been received concerning only one shop.....

The allotment of second shop would have been made by issuing an independent advertisement inviting applications from the eligible categories of the persons/ societies. No such advertisement was issued. Thus, no allotement could have been made to Respodnent No.4. In our view, Respodnent No.2 erred in exercise of discretionary jurisdiction."

. Another Division Bench of this Court subsequently in Writ Petition No.850 of 2001 decided on 3.5.2001 in Shri.Vajaram J. Choudhary V/s. State of Maharashtra & Ors. was once again dealing with the powers of revision to be exercised by the Minister. In that case, the advertisement was issued on 4.6.1998. The shop was awarded in favour of Respondent No.5 in that petition. That was challenged in revision, which came to be disposed of by an order dated 30th August, 2000. While considering the revisional powers under clause 30 of the Maharashtra Foodgrains Rationing Order, 1966, the learned Division Bench, after reproducing clause 30, was pleased to observe in paragraph No.4 of the judgment as under:-

"The wording of clause 30 is clear, plain and unambiguous. In our view, this clause does give power to Respondent No.3 to sanction additional fair price shops over and above the fair price shop over

and above the fair price shop sanctioned by Respondent No.2. The revisional powers are wide enough to add, to amend, vary, suspend or cancel any authorization issued by the competent authority either on application made to it or him by an aggrieved person within 30 days, from the date of receipt by him of any order by which he is aggrieved or suo motu within one year from the date of any order passed by any officer under the provisions prescribed by or under the Maharashtra Foodgrains Rationing (Second) Order, 1996. In view therefore, we are not in agreement with the submission made by the learned Counsel appearing for the petitioner that the Respondent No.3 has no powers to sanction authorization in favour of the Respondent No.4."

. The judgment in the case of Shri.Vajaram J.Choudhary supra came to be pronounced on 3.5.2001. It appears that the attention of the learned Division Bench was not drawn to the judgment in Shri.Bali Co-operative Consumer Society Limited (Supra).

7. Therefore, the question, the Court will have to answer, considering the apparent conflicts in the two judgments is whether the matter need to be referred for consideration by a full Bench of this Court. Considering the subsequent events and various notifications, we are inclined to hold that this exercise need not be gone through. The reasons being as

under:-

. The notification/letter dated 7.5.1999 makes it clear that only one ration shop can be alloted under one Item number. Once that be the case, the revisional authority by resorting to clause 30 cannot do something which the Rationing Officer could not do. In other words, if the Rationing Officer could allot one shop, it is not open to the revisional authority in the exercise of powers of revision under clause 30 to grant more than one shop. Any such exercise will be totally without jurisdiction. Secondly, the Government Resolution of 9.6.2000 makes the position still clearer. By virtue of this resolution no new shop can be issued unless notification is issued. Further the minimum number of units that each shop must have is 3000 units and the maximum 8000 units. It is not open to the Controlling Officer in the event there are more units than 3000 but less than 8000, to grant any additional shop. The grant of additional shop would be when there is excess number, which can be granted subject to what is set out in the Government Resolution of 9.6.2000.

. Considering that the letter of 7th May, 1999 and the Government Resolution was not placed for consideration before the learned Division Bench, the learned Division Bench answered the issue of interpretation of clause 30 in the manner as set out in the judgment of Shri.Vajaram J.Chaudhari (supra). That judgment would no longer be

good law, considering what we have set out earlier. The position in law is now clear. The Revisional Authority exercising power of revision, does not have the power to grant additional shops other than which were advertised. The advertisement has to be for the number of shops to be alloted. The number of units should not be less than 3000 and should not exceed 8000, and for additional units considering the Government Resolution of 9.6.2000 a fresh notification / advertisement will have to be issued for issuance of new ration shop. We may however note that the Government Resolution of 9.6.2000, the Government has not disturbed the position which was existing earlier but has made it applicable to notification issued after the date of issuance of the said Government Resolution.

. Having said so, the question is whether on the facts of the present case the order needs to be interfered. The advertisement was issued on 19.3.1996. At the relevant time, there seems to have been a lacuna in the matter of granting of more than one shop and the minimum number of units, which was noted by a Division Bench of this Court in Shri.Ramchandra Musia Pal (supra). Considering that though we make the position of law clear, on the facts of this case we do not propose to interfere with the order passed by the second Respondent.

. Rule is made partly absolute accordingly. There

shall be no order as to costs.

(F.I.REBELLO, J.)

(S.P.KUKDAY, J.)